

STATE OF NEW YORK
EXECUTIVE DEPARTMENT

DOCKET FILE COPY ORIGINAL

ADIRONDACK PARK AGENCY

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APR 27 1998

FCC Docket No. 97-182

April 28, 1998

Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Members of the Commission:

Subject: Proposed Rule Making in the Matter of Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities (NPRM) (FCC No. 97-276, MM Docket No. 97-182)

The Adirondack Park Agency commented on the NPRM proposal October 27, 1997 (attached). The Agency recently learned that the Commission has solicited additional comment on whether the rule proposed by the NPRM constitutes a major federal action affecting the environment, thereby requiring the preparation of an Environmental Impact Statement pursuant to the National Environmental Policy Act (NEPA).

The Agency respectfully suggests that the Commission must limit the scope of the preemption with respect to State environmental statutes like the New York State Adirondack Park Agency Act, the New York State Freshwater Wetlands Act and the New York State Wild, Scenic and Recreational Rivers System Act administered by the Agency within New York's six-million-acre Adirondack Park. Without such a limitation there is a clear risk of significant undue adverse environmental impacts to Park resources as a result of the proposed rule, especially to wetlands, and to land at elevation of 2,500 feet or more which is considered a critical environmental area under the statute.

The Agency is given specific statutory review authority over tall structures in the Park, one of several types of regionally significant new land use and development identified for Agency review. It administers this responsibility through the application of staff expertise in physical and biological sciences, including wetlands, State law and policy, and the considered judgement of an eleven-member board representing the State Executive, local residents and statewide interests.

This process identifies potential impacts to wetlands, rare and endangered species and their habitat, designated wilderness and public wildlands, and the natural, cultural and recreational resources that frame the core values of the Adirondack Park. Based on the evidence assembled, alternative locations or appropriate conditions may mitigate the impacts that are identified.

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A significant portion of the six million acres within the Park boundary is designated Wilderness. According to the "Adirondack Park State Land Master Plan":

A wilderness area, in contrast with those areas where man and his own works dominate the landscape, is an area where the earth and its community of life are untrammelled by man--where man himself is a visitor who does not remain. A wilderness area is further defined to mean an area of state land or water having a primeval character, without significant improvement or permanent human habitation, which is protected and managed so as to preserve, enhance and restore, where necessary, its natural conditions, and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least ten thousand acres of contiguous land and water or is of sufficient size and character as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological or other features of scientific, educational, scenic or historical value.

Significant portions of the state lands within the Park are in a wilderness or near-wilderness condition today. These areas constitute nearly 20% of all designated federal and state wilderness east of the Rocky Mountains and 85% of the designated wilderness in the eleven northeastern states.

We continue to believe the proposed preemption is overbroad for its alleged purpose and threatens the extraordinary resources of the Adirondack Park. We reiterate our view that the proposal must be modified to assure that the environmental values of the Park are protected. Therefore, we support arguments that the present proposal requires an EIS under NEPA, especially since a key factor in determining whether an EIS is required is whether a proposed action threatens a violation of federal, state or local law or requirements imposed for the protection of the environment.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel T. Fitts", with a stylized flourish at the end.

Daniel T. Fitts
Executive Director

DTF:nmh:wp
Attachment

cc: Agency Members and Designees

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EXECUTIVE DEPARTMENT
ADIRONDACK PARK AGENCY

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October 29, 1997

Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Members of the Commission:

Subject: MM Docket No. 97-182
Preemption of State and Local Zoning
and Land Use Restrictions on the Siting,
Placement and Construction of Broadcast
Station Transmission Facilities

The Adirondack Park Agency is a State agency with responsibility for New York's Adirondack Park, a six-million-acre area in northern New York, home to the largest designated Wilderness area east of the Mississippi River. The Park includes both public and private lands in about equal portions. The Agency administers plans for both pursuant to the Adirondack Park Agency Act (Executive Law, Article 27), as well as the New York State Freshwater Wetlands Act (Environmental Conservation Law, Article 24) and the New York State Wild, Scenic and Recreational Rivers System Act (Environmental Conservation Law, Article 15, Title 27) within the Park. It is also subject to century-old provisions in the New York State Constitution that designate the public lands forever wild: "The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands...." The New York State Constitution also protects scenic beauty: "The policy of the state shall be to conserve and protect its natural resources and scenic beauty...." (Article XIV, §4).

The proposed rule would preempt New York State law, virtually eliminating State legal protections for the public and private lands of the Park with respect to broadcast transmission facilities. It would substitute the judgement of federal officials in (in the words of the FCC Local Government Advisory Committee) "an expensive, distant and unfamiliar forum...." We vigorously object to the breadth and depth of this proposal.

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State parks and wilderness areas must be protected from such a sweeping preemption.

The provisions of the Adirondack Park Agency Act require an applicant for new land use and development on private land and over 40 feet in height to demonstrate there would be no "undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the park...taking into account the commercial, industrial, residential, recreational or other benefits that may be derived from the project." (APA Act, §809(10)(e).) A State program providing reasonable protection to natural and environmental resources should not be the subject of sweeping preemption for all broadcast transmission facilities.

The information available with the notice suggests that the proposed preemption is overly broad and inappropriate to the purported objective of facilitating broadcast digital television to major (the top 30) U.S. markets, especially in the absence of any specific legislative authority.

In addition, as we understand this proposal, there would be some residual authority left to State and local controls on health and safety issues, but the burden is on State and local governments to demonstrate the regulation is reasonable. While the proposal may allow some substantive input on health and safety matters, it does not accommodate environmental or aesthetic concerns. For whatever residual authority remains to State and local government, the proposal allows only ridiculously short time frames for local action, often before a meeting of this agency could be scheduled, and bypasses local court review. We cannot agree that such local issues can be swept aside.

Towers servicing different wireless transmission needs continue to be located in the Adirondack Park, consistent with the Park's State and private land use plans. We believe the State's statutory procedures administered by this agency provide timely review and appropriate protections of the unique values of the Park, and that the proposed rule is inappropriate and unnecessary as it might apply in the Adirondack Park.

Sincerely,



Daniel W. Fitts
Executive Director

DTF:dal

cc: Agency Members and Designees